IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5027 OF 1986

Vishnu Dadu Lokhande, since deceased by his heir Ramu Vishnu Lokhande since deceased by his heir and legal representative Krishnat Ramchandra Lokhande ... Petitioner

versus

1. Bandu Gopala Pawar;

2. Mahadev Yeshwant Retharekar;

3. Yeshwant Krishna Retharekar, since deceased, through Resp. No. 2;

4. (A) Raghuttam Neelkanth Retharekar, since deceased by his heirs and legal representatives :

(1) Smt.Shalini Raghuttam Retharekar;

(2) Madhusudan Raghuttam Retharekar;

(3) Vasudeo Raghuttam

Retharekar;

(4) Rajendra Raghuttam
Retharekar;

(B) Anandibai Nilkanth
Retharekar ... Respondents

...

Mr. Vineet B. Naik, for the Petitioner.

Mr. V.S. Gokhale, for Respondent No. 2.

Mr. M.V. Sali & Mr. A.H. Palekar, for Respondent No.2 (consent obtained).

Mr. Uday Warunjikar, for Respondents Nos. 2, 4-A-1 and 4-A-2 (V.P. filed in C.A. No. 7930/2000).

Respondents Nos. 4-A-3 and 4-A-4 served.

Writ Petition stands abated as against Respondent No.1.

...

CORAM : A.M.KHANWILKAR,J.

11th June 2004

ORAL JUDGMENT :

01. This Writ Petition under Article 227 of the Constitution of India takes exception to the judgment and order passed by the Maharashtra

Revenue Tribunal, Pune, dated January 16, 1986, in Revision No. MRT-NS-XI-3/83 (TNC.B.302/82). It is unnecessary to reproduce all the events so as to burden this judgment, for, in my view, the narration of facts by the Tribunal in its judgment refers to all the necessary events and I would prefer to adopt the same. Briefly stated, the land in question is Survey No. 716/A situated at village Rathare Budruk, taluka Karad, district Satara. Petitioner filed civil suit for injunction against the Respondents. In the said suit, the issue, which was required to be exclusively tried and decided by the Tenancy authority, was raised. In the circumstances, the Civil Court made a reference to the Tenancy authority under section 85A of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as "the Act") to determine the area of land in respect of which the Petitioner has become deemed purchaser. The authority (Additional Tahsildar, Karad), after elaborate enquiry, found as of fact that although the certificate under section 32M of the Act issued in favour of the Petitioner mentions area as 46 gunthas; however, from the proceedings under section 32G of the Act, which

were concluded by decision dated 14th June 1961, in particular the statements made by the father of the Petitioner, clear position emerged that declaration in favour of the Petitioner's predecessor was that he had become deemed purchaser in respect of 30 gunthas of land only. Accordingly, the issue was answered by the Tenancy authority on that basis. Against this decision, the Petitioner carried the matter in appeal. The appeal came to be dismissed by the appellate authority on 11th March 1983. Even the revision application preferred by the Petitioner came to be dismissed by the judgment and order passed by the Maharashtra Revenue Tribunal on 16th January 1986, which is subject matter of challenge in the present writ petition.

02. After having considered the rival submissions and having gone through the proceedings, I have no hesitation in taking the view that there is no infirmity either in the approach or the conclusions concurrently reached by the authorities below that declaration in favour of the Petitioner's predecessor was only in respect of 30 gunthas of cultivable land

concerning Survey No. 716/A. To my mind, no fault can be found with the approach adopted by the authorities below that although the certificate under section 32M of the Act has been issued mentioning 46 gunthas of land; however, the certificate will have to be read consistent with the actual proceedings as a result of which the certificate came to be granted in favour of the Petitioner's predecessor. Indeed, by virtue of provisions of section 32M of the Act, there is presumption in favour of the Petitioner, but that presumption stands rebutted by the actual proceedings, which have been adverted to, including the admission of the Petitioner's predecessor during the said proceedings. Accordingly, I see no infirmity in the view taken by the authorities below in answering the issue as was referred to them by the Civil Court on the above terms.

. Hence, this writ petition fails and the same is dismissed with no order as to costs.

. All concerned to act on the copy of this order duly authenticated by the Court

Stenographer of this Court.

(A.M.KHANWILKAR,J.)

jg.83